SUPREME COURT OF FLORIDA
WEDNESDAY, MARCH 18, 1981

STATE OF FLORIDA, Petitioner,	:	
vs.	:	CASE NO. 59,953
MARK ROYER,	:	District Court of Appeal 3rd District
Respondent.	:	Case No. 78-1050
	:	

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is hereby denied.

No Motion for Rehearing will be entertained by the Court. See Fla.R.App.P. 9.330(d).

SUNDBERG, C.J., BOYD, OVERTON, ENGLAND and McDONALD, JJ., Concur
ADKINS and ALDERMAN, JJ., Dissent

A True Copy
TEST: CC: Hon.Louis J.Spallone,Clerk
Hon.Richard P.Brinker,Clerk
Hon. Ellen M. Gable,Judge
Sid J. White, Calvin L.Fox,Esquire
Clerk Supreme Theodore Klein,Esquire
Court, By: Deputy Clerk Al

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 78-200

THE STATE OF FLORIDA)
PLAINTIFF,)
vs.)MOTION TO SUPPRESS
MARK ROYER,)
Defendant.)
)

Defendant, MARK ROYER, by and through his undersigned counsel, hereby files this his Motion to Suppress all physical evidence in this case, including one white suitcase, one grey suitcase, the contents of both suitcases, including a substance alleged to be marijuana and currency of the United States on the following grounds:

1. The property was illegally seized without a warrant.

2. The facts on which the motion is based are as follows:

a. The Defendant was observed in an airport ticket line by two police officers.

b. The officers were narcotics officers patroling the airport looking for people they thought might be carrying narcotics.

c. The Defendant, by reason of the fact that he placed his suitcases near the front of the ticket line, that he appeared somewhat nervous and that he paid cash for his

ticket, made the officers suspicious that he might be a person involved in narcotics.

d. That Defendant purchased his ticket and began to move towards the concourse to board his flight.

e. The Defendant, while engaged in lawful conduct, was stopped by the two officers who identified themselves as police officers and asked the Defendant to accompany them to a lounge area away from the main stream of airport traffic for questioning.

f. The Defendant was further detained and questioned which concluded in the officers searching the Defendant's suitcases.

g. The officers claim that they asked for and received consent to search Defendant's suitcases.

h. The alleged consent was obtained after the officers informed the Defendant that they suspected he was transporting narcotics and after he had been detained for a considerable period of time.

i. One of the officers admitted on deposition that he did not have probable cause to believe the Defendant was transporting narcotics.

j. The Defendant was not advised that he did not have to answer the questions,that he could refuse to give his consent to the search.

3. The search of the Defendant's suitcases was conducted in violation of the Fourth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States and Article I, Section 12 of the Florida Constitution. The search was conducted without a warrant. The exception to the warrant requirement relied on by the State in the instant case is consent. It is clear,however, that the Defendant did not voluntarily consent to the search and that his purported consent was a mere acquiescence to the authority of the officers caused by the illegal detention of the Defendant.

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IRWIN J. BLOCK, ESQ.

[EXCERPT OF TESTIMONY]

Q. Had you received any prior information regarding Mr. Royer at that time?

A. No, sir.

Q. And what, if anything, drew your attention to him?

A. The two suitcases, one was white in color and appeared used, and the other was a silver gray suitcase which appeared to be brand new. The subject appeared pale and he was looking around continually as if he were looking for anyone that might be paying particular attention to him.

His age and his nervousness and his luggage were all significant factors that were consistent with the characteristics of the profile.

Q. As to ---

THE COURT: Why?

THE WITNESS: The profile was put together by Detroit D.E.A. based on approximately a hundred drug arrests that they had made at their airport, at the airport. And they looked back over all the arrests they made from January of '74, to February of '75, and they found that the persons who had been arrested shared numerous common characteristics, one being they were twenty-five to thirty-five years of age; that their dress was similar in that they were casually dressed. They bought one way cash tickets, primarily from Los Angeles to Detroit, and were primarily at that time involved in heroin trafficking. But they also had other kinds of narcotic cases.

Based on that age, some other characteristics that Detroit found, we instituted our program. We found that

one of the characteristics that was common here when we looked back at our arrests, American Tourister suitcases seemed to be standard issue for marijuana smuggling.

This was simply something we observed by looking back at the arrests and looking back at pictures of all the suitcases. And they were a light brown and a light silver color with combination locks on the suitcases, kept reappearing over and over again. And one subject told us that he had purchased ---

MR. BLOCK: Objection.

THE COURT: All right, sustained.

A. [Continuing] For that reason, the fact that the Defendant was nervous in appearance, looking around at other persons as though he might be looking for possibly police officers, knowing that he was carrying two suitcases full of marijuana and the types of suitcases and his age and general dress appearance were all consistent with our experience here in Miami and the drug courier profile that we had started working from. So that attracted my attention immediately.

Q. [By Mr. McMaster] Officer, you stated, "I work at the terminal eight hours a day, five days a week." You watch persons, is that correct?

A. As much as possible when I am not in Court, yes, sir.

Q. Approximately how many persons have you observed?

A. There would literally be thousands in the last six months.

Q. Would it be unusual in your opinion to see someone nervous at the Airport?

A. Well, people at the Airport, some of them are in a hurry, and some of them really don't care about flying. That might be your typical white knuckle type flyer, or they might be meeting somebody. So people are acting in different ways.

What has been my experience, though, is that persons who are looking for somebody will look around, looking for that one person.

Persons who don't like to fly are generally fidgeting and talking to one another or maybe just exhibiting some characteristics of uneasiness. The people in my experience that have ultimately been arrested in possession of narcotics seem to look around and study anyone that is around them to try -- and it appears that they are studying each person. So, in my experience it has been something that is a perceptibly different type of nervousness to us. That word, that may be the wrong word, but ---

Q. With regards to the Defendant, Mark Royer, would you say based on your experience and observations made at the Miami International Airport that his type of nervousness was different that the white knuckle airline passenger nervousness that you testified about?

MR. BLOCK: I am going to object. There is no way that this witness is qualified to nor can he speculate on different kinds of nervousness or what causes it.

THE COURT: I think he's really already answered it to begin with, so objection is sustained.

Q. [By Mr. McMaster] Why were you watching that particular flight, Officer?

A. It was a flight to the west coast which is one that is common. It was flight number 136 -- or correction, it was flight 136 to New York which departs

* * *

Detective, how far away from the Defendant were you at this point?

A. Approximately twenty feet.

Q. And were you able to see the Defendant clearly or was your view obstructed by anything?

A. We could see him clearly. There were a number of people standing around, but we kept a constant surveillance on him.

Q. At the time that he drew this large roll of bills that you testified about out, were you able to see the denominations on the bills?

A. No, sir. I couldn't see the denominations. I just observed that it appeared to be an extremely large number of bills.

Q. What particular significance, if any, did you attach to the large number of bills?

A. Well, the common characteristic from the D.E.A. profile was that the people paid cash for their tickets, which would allow them to use any name that they wanted to without having to provide any kind of proof of identification as would be the case if they were to use a credit card or check. And small denomination bills were also prevalent in the D.E.A. profile. A large number of bills was significant in that regard.

Q. What, if anything, did you do at this time?

A. Well, we continued to watch his activities as he purchased his ticket.

Q. What happened next?

A. He was then given two stick-on adhesive labels which are required by the airlines to be attached to any bag that is going to be checked in. And we watched him fill out the labels and attach them to the two bags.

Q. Detective, you testified you are about twenty feet away from him at this point?

A. Yes.

Q. Were you able to see what he filled out on the labels?

A. Well, as soon as he filled out the labels and the ticket agent put them on the conveyor belt, I went to the end of the line where the conveyor goes. And the two bags said, "Holt," H-o-l-t. And the word "La Guardia," was written underneath them.

Q. What, if anything, did you take those two words to mean?

A. Holt, I assumed to be the person's last name. And La Guardia, the irport he was flying to.

Q. Are you familiar with the airlines regulations regarding baggage identification?

A. Yes, sir. They require name, address and phone number.

Q. In your opinion, did the tags filled out by the Defendant comply with those particular regulations?

A. They didn't comply with the regulations that I am familiar with. And they were also consistent with other

investigations and arrests that I have performed in that only the last name, sometimes not even a city will be attached whereas a person who is truly concerned about the identification uses ---

MR. BLOCK: Objection.

THE COURT: Sustained.

A. [Continuing] Whereas other people ---

MR. BLOCK: Just a minute.

THE COURT: Sustained.

Q. [By Mr. McMaster] Were the two bags that you observed with those labels "Holt, La Guardia," on them the same two bags you had observed the Defendant carrying to the counter?

A. Yes, sir.

Q. What, if anything, did you do at this time?

A. The subject left the ticket counter and ---

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